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## THE MINERS' LAWS OF COLORADO

To the student of governmental institutions in the United States, government based upon social compact is a familiar conception. As a basis of state-making in the West the idea has received the attention of many historians and needs no elaboration here. But less attention has been given to the social compact as a basis of local government. The object of this paper is to present the salient features of the beginnings of organized governmental units in what is now the state of Colorado.

It has long been known that when the principal mining areas of the Far West were first developed, the miners, finding themselves beyond the long arm of the law, found it necessary to lay off mining districts, to organize governments, and enact laws.<sup>1</sup> Historians who have dealt with the subject have not examined the sources critically, and have usually been content with stating the content of the law of some one district, citing this as typical of all the districts. Furthermore, a systematic search for the records of the mining districts, with the exceptions of California, Nevada, and Colorado, has not been made. It has been the belief of most investigators that the records of the mining districts of Colorado could never be recovered, a view which is probably traceable to Hollister who in 1867 said, "It is impossible to get complete copies of these laws now, some of them having been lost, together with the boundaries of the districts".<sup>2</sup> The Colorado State Historical and Natural History Society has obtained the printed laws of five districts and the minutes of a single district, and with these, investigators appear to have been content.

In the summer of 1918 I undertook the work of bringing to light the original sources. The clue to their location was found in a territorial law of November 7, 1861, which reads,

A copy of all the records, laws and proceedings of each mining district, so far as they relate to lode claims, shall be filed in the office of the County Clerk of the county in which the district is situated, within the boundaries of the district attached to the same, which shall be taken as evidence in any court having jurisdiction in the matters concerned in such record or proceeding.

<sup>1</sup> H. H. Bancroft, *Works*, XXIII. 397-400; XXV. 127, 407; XXXV. 240-247; Thompson and West, publishers, *History of Nevada*, p. 62; Coutant, *History of Wyoming*, p. 642; O. J. Hollister, *Mines of Colorado*, pp. 75-82.

<sup>2</sup> Hollister, *Mines of Colorado*, p. 82.

The law also stated that all rights of occupancy, possession, or enjoyment of any tract or portion of the said public domain acquired before November 7, 1861, should be ascertained, adjudged, and determined by the local law of the district or precinct in which such tract was situated.<sup>3</sup> The substance of these provisions was also incorporated in a revised statute of 1867.<sup>4</sup>

An examination of the contents of the vault of the county clerk of Boulder County resulted in the discovery of thirty-one volumes of mining district records. They disclosed the fact that during 1859-1861 eight districts were organized. Twelve volumes contained records of claims, four were indexes of claims and transfers, nine were laws and minutes, and the rest were miscellaneous records.

At Central City, the county seat of Gilpin County, 124 volumes of mining records from twenty-seven districts were found. Seventy-nine volumes contained records of mortgages, deeds, conveyances, attachments, pre-emptions, sales, and claim locations. Twenty-one volumes contained indexes, three were docket books, and twenty-two volumes contained laws and minutes. On the wall of the office of the county clerk hung a map of the county made in 1866, showing the mining districts as they then existed.<sup>5</sup>

A third survey was made at Georgetown, the county-seat of Clear Creek County. Here the records of twenty-seven districts were found. The volumes totaled 164. Ninety-five contained records of claims, mill sites, lodes, and deeds. Twenty-five were indexes, two were docket books, and forty-two contained laws and minutes. A map of the survey of 1866 was also located.<sup>6</sup>

Of the district records the most valuable are the laws and minutes. Out of sixty or more districts in the three counties, the laws and minutes were intact for about forty districts. It was evident

<sup>3</sup> R. S. Morrison, *Mining Rights in Colorado* (third ed.), pp. 3, 4; Colorado Territory, *General Laws, Joint Resolutions, Memorials, and Private Acts, passed at the First Session of the Legislative Assembly*, pp. 167-168, sec. 12; *ibid.*, pp. 168-169, sec. 4. The validity of the laws of the mining districts was recognized by a United States law of May 10, 1872. See *Statutes at Large*, XVII. 91.

<sup>4</sup> Colorado Territory, Legislative Assembly, 7 sess., *Revised Statutes*, p. 466, sec. 11.

<sup>5</sup> This map is now at the University of Colorado.

<sup>6</sup> Through the kindness of Mr. Frank A. Maxwell, the county treasurer, this map was loaned to the University of Colorado. Through Mr. Hal Sayre of Denver, the University has recently become permanently possessed of one of these rare maps. Gilpin, Clear Creek, and Boulder counties were the most important centres of Colorado mining during 1859-1861, but there were other rushes into Summit and Park counties, along the Upper Arkansas, and into the San Juan country. The records of these latter regions have not been examined. If funds are available, the surveys will be made during 1920.

that the law of 1861 had been violated, that some of the records had not been deposited with the county clerks, or that careless officials had allowed the records to be taken from the archives. Fortunately some of the missing records have been found. Many of the districts printed their laws and four sets of these printed laws, the originals of which are not in the county archives, are in possession of the State Historical and Natural History Society. One manuscript of minutes is also held by the Society. Mr. Jesse S. Randall, the editor of the *Georgetown Courier*, loaned me three sets of manuscript laws. The papers of Senator Teller and of Mr. Hal Sayre were recently acquired by the University,<sup>7</sup> and among these were found the printed laws of five districts and the manuscripts of laws and minutes of seven districts. The early files of the *Rocky Mountain News* have also been examined and from them several lacunae in the records have been filled.

The records of the older districts reveal the fact that the first codes to be adopted were simple, and that as conditions changed, the miners found it necessary to revise, amend, and recodify the laws. The later enactments were more complex and more technical than the earlier laws, and new offices with clearly defined functions were created. The records of Gregory Diggings, one of the earliest and largest districts in Gilpin County, show how the laws of a district evolved.

At a meeting of the miners held on the North Fork of Clear Creek on June 8, 1859, Wilk Defrees was elected president and Joseph Casto secretary. The miners then adopted nine resolutions. The first defined the boundaries of the district and the other resolutions constituted a simple mining code. The second resolution provided that no miner should hold more than one claim, except by purchase or discovery, and in case of purchase, that the same should be attested by at least two disinterested witnesses, and should be recorded by the secretary, who should receive one dollar for the work of recording each claim or purchase. The third resolution provided that title to a claim would not be valid unless the claim were staked off with the owner's name and with a description of the property. When the claim was held by a company, the name of each member was to appear conspicuously. The fourth resolution stated that each miner should be entitled to hold one mountain claim, one gulch claim, and one creek claim for the washing of gold. Mountain claims were to be one hundred feet long and fifty feet

<sup>7</sup> These papers were obtained largely through the efforts of Professor James F. Willard.

wide, and gulch claims one hundred feet "up and down the river or gulch, and extending fifty feet". According to the fifth resolution, mountain claims, unless worked within ten days from the date of staking, would be forfeited. The sixth resolution provided that when a company was working one of its claims, other claims could be held without being worked if a notice were put up. The seventh provided that a discovery claim must be marked as such, and was to be held whether worked or not. The eighth was to the effect that priority of claim had to be respected. The ninth provided that when two parties wished to use water on the same stream or ravine for quartz mining, the water was to be equally divided.<sup>8</sup>

Within a month the miners discovered that their laws were insufficient to protect their rights. A codification committee was therefore appointed. On July 9 a report was made to a miners' meeting at which a single resolution was adopted to the effect that the officers of the district were to be a president, a recorder of claims, and a sheriff, who were to be elected by ballot and were to hold office for a year. Captain Richard Sopris, after whom Mt. Sopris was named, was elected president.<sup>9</sup>

On July 16 a new code was adopted, the resolution of the previous meeting being incorporated as number one. The sheriff was to have power to serve notices and executions, to summon parties and jurors, to put parties in possession of property given them by court decisions, and to do "such service as a sheriff could do in any other place". The recorder was made keeper of the district records and was to make all legal records. His books were to be open to public inspection and were never to be taken from his possession. Claims then being worked were not to be recorded unless the owner saw fit to do so. If lead claims could not be worked to advantage that season because of lack of water or machinery, by filing a statement of reasons with the recorder claims could be held without working until the following June. Water claims were to be recorded within ten days from the claim date or be forfeited. All bills of sale or conveyances of claims were to be witnessed by two disinterested persons and recorded.

Previous laws relating to trials concerning disputed claims were repealed and a new law adopted. When any person was aggrieved in regard to a claim, he was to file with any commissioned justice

<sup>8</sup> Gilpin County, Laws and Regulations of the Mines of the Gregory Diggings District.

<sup>9</sup> Mountain City, now parts of Central City and Black Hawk, was laid out by Sopris. He began to build the first house in the town on May 22, 1859. See Bancroft Library MS., Sopris, Settlement of Denver, p. 6.

of the peace, or in his absence with the president of the miners' association, a statement of his grounds of complaint with the names of the parties of whom complaint was made, and a prayer that they be summoned to appear and answer. The justice or president was then to issue a summons to the adverse party to appear and answer within three days. If he failed to appear, the complaint was to be taken as true and execution issued. If he appeared and answered, a venire of nine persons was to be summoned, from which number each party was to strike off three, and the remaining three were to hear the evidence, with or without counsel, "and try the case". If the losing party felt aggrieved by the decision, he could appeal to a jury of twelve men selected by the justice or president, and their decision was final. The defeated party was liable for all costs of the suit and the justice or president was to issue execution for the same, which were to be collected from any property the party so liable might have, with the exemption of tools, bedding, clothing, and provisions necessary for three months.

The code provided that any person might, by recording, take up a building lot forty feet front by one hundred feet deep, but this property, if found rich in gold, might be mined by another party who must, however, protect the house against damage. Any person or company intending to erect a quartz-mill might select a location 250 feet square. He might also claim the right to cut a race from any river and could hold the water provided that he did not interfere with vested rights.

Gulch claims were to be one hundred feet up and down and fifty feet wide following the meanderings of the stream, and were to be worked within ten days if water could be obtained. If a miner held both a gulch and a lead claim, if one were worked the other could be held by recording it. Water companies were to have the right of way and could pass over any claim, road, or ditch, but were to guard against injury to any party over whose ground they passed.

Companies formed for tunneling could stake off 250 feet "each way from the tunnel and running as the tunnel is intended to run"; after that all new leads discovered in tunneling belonged to the company to that extent, provided that claims already taken were respected. If work on a tunnel were stopped for one week at any time, the tunnel claim was forfeited.<sup>10</sup>

This code sufficed until February, 1860, on February 11 a new committee being appointed to amend the laws. The work of the committee was approved on February 18 and 20. The amended

<sup>10</sup> Gilpin County, Gregory District, Book A.

code provided that within four days the recorder must post three notices in each of the adjoining districts inviting the citizens of those districts to send three delegates from each district to "a meeting to be held at the City Hall in Mountain City" at two o'clock P. M. on March 1 to fix permanently and accurately the boundaries of Gregory District. After the determination of the boundaries, no changes were to be made without the consent of the citizens of the district; in the future if any persons desired to change the boundaries, or to erect a new district within Gregory District, or to annex territory, twelve notices were to be posted in conspicuous places giving ten days' notice of a public meeting to consider the matter.

The code defined the terms lode, gulch, patch or placer, tunnel, ditch, water, building, and ranch claims. No person was to hold more than one lode, gulch, or patch claim except by discovery or purchase, nor more than one water, building, or ranch claim except by purchase. Any person owning a quartz-mill claim upon which he had a mill or was preparing to erect one, might claim the right to cut a race or ditch from any stream to bring water to his mill, provided that he did not interfere with vested rights, all claims held under previous laws being regarded as vested property. When water was claimed for gulch and quartz-mining purposes on the same stream, and the water was insufficient for all, priority of claim was to determine who should have the water. All questions arising out of the riparian rights of proprietors which were not covered by the provisions of the code were to be settled in accordance with common law. Rules and regulations observed in mining regions within the United States regarding the digging for gold under building lots or upon ranch or other claims were to be observed in the district. Upon the location of a tunnel for discovery purposes, the owner was to file with the recorder a specification which should state the place of commencement and the terminus of the tunnel, with the names of the owners. A "four squair" stake was to be placed at the tunnel mouth, "having written thereon the same things hereby made necessary to record". Persons working a tunnel were given priority of right to all leads discovered in the line of the tunnel and were given the right of way through all leads which might be along the course of the tunnel.

Another act related to the officers of Gregory District. This act provided that the officers were to be a president, a judge of the miners' court, and a recorder who was to be *ex officio* secretary and treasurer of the district. These officials were to hold office for one

year unless removed by the citizens for misconduct. The sheriff of Arapahoe County was appointed *ex officio* sheriff of the district. The franchise was also fixed by the law, every person who owned a recorded claim being allowed to vote.

An act was also approved to establish a miners' court and regulate its jurisdiction. The act provided that a regular term of court was to be held at some convenient and proper place in the district on Monday of each week. The officers of the court were to be a judge, a clerk, the sheriff of Arapahoe County and his deputies, and the "attorneys of said court regularly admitted as such". The duties of the judge were specified and under certain conditions the president of the district might preside in place of the judge. The miners' court was to have equity as well as law jurisdiction and could grant injunctions. The court could fine for contempt in a sum not exceeding fifty dollars. It could appoint its own clerk who was to have such powers as a clerk of record had in Kansas.

The jury for each term of court was to be drawn upon the Thursday next preceding each term. The sheriff or his deputy placed the names of one hundred "good and suitable" men in a box, and the judge or clerk then drew the names of eighteen who were to be summoned for the next term of court.

The citizens also passed an act regulating practice in the miners' court. Section 1 provided that if any person wished to commence a suit or action in the miners' court, he should file with the judge or clerk a written statement setting forth his grounds of complaint. Such statement, if in equity, was to be in the nature of a petition, and if in law of a complaint. Upon the filing of a petition or complaint, the court or the clerk was to issue a writ of summons to be served upon the defendant or defendants to appear and answer. Other sections dealt with answers, demurrers, pleadings, depositions, foreclosures, and garnishee process. Pleadings in equity and rules of evidence, with certain stated exceptions, were to follow the practice in United States courts.

In cases of judgment for partition of claims between joint owners, three disinterested commissioners were to be appointed by the court to effect the partition. In cases of attachment and replevin, the practice recognized by the laws of Kansas was to be observed. In all cases where the liability of persons in actions founded upon contract, tort, or mixed actions was not defined by the laws of the district, the common law was to apply.

Still another act related to trials. The law provided for the filing of bonds to cover costs in civil suits. When a jury was de-



manded, the court or clerk was to call nine persons from the jurors summoned, and each party was to strike off three names. Jurors were to hear evidence in cases in equity as well as in law. Appeals from the decision of the jury must be perfected within three days and the trial take place at the next regular term of court, unless the parties agreed to an earlier date. All trials on appeal were to be decided by a jury of twelve, and their verdict was to be final.

A previous act had provided that there be exempted from levy and sale upon execution tools, bedding, clothing, and provisions necessary for three months. A new enactment included among the exemptions cooking utensils, and in case of a man residing in the district with his family, a lot and dwelling-house not exceeding five hundred dollars in value, necessary furniture, a Bible, family pictures, and relics.

Another act dealt with crimes and nuisances. All crimes committed in the district were to be punished as a jury of twelve might direct. Persons who caused any nuisance which might affect the health of the inhabitants were liable to be sued by the district. Damages were not to exceed one hundred dollars and costs. Any person placing an obstruction on a highway, or digging a pit and leaving it open so as to endanger life or limb along a road or trail was liable for damages.

An act containing general provisions for the government of the district was also passed at this time. The judge was to pay weekly to the district treasurer any money which he had received in his court, and the treasurer was not to pay out any of it except upon a "fairly complete" vote of the citizens. All previous laws, except where pending suits might be affected, were repealed by the acts of February 18 and 20.<sup>11</sup>

These laws were enacted in the winter time, when there was little activity in the mines. But with spring came new groups of miners and changed conditions which required the amending of the laws. On May 25, 1860, at a meeting of the citizens held at Mountain City several resolutions were adopted. These resolutions were primarily intended to make it possible to hold claims until machinery might arrive or until sufficient water could be obtained.

Up to this time no adequate law had been made for the administration of estates of the deceased. This gap in the laws was now filled by a resolution to the effect that in case of the death of any person owning property in the district, the president was to appoint an administrator who would close up the estate according to the

<sup>11</sup> Gilpin County, Gregory District, Record A 2d.

laws of Kansas. The president, in all such cases, was to perform the duties of a probate judge.<sup>12</sup>

The laws of Gregory District remained without change until February 16, 1861, when the code was again amended. It was then provided that each discovery claim was to be plainly marked and staked, with the name of the discoverer on the stake, and that a shaft should be sunk to the crevice. Discovery claims were to be described plainly on the records, and if the stake or landmark were removed, a penalty of ten dollars was to be imposed upon the guilty party. All claims henceforth were to be held as real estate.

The criminal law had been very general. The lawmakers now made provision for the punishment of minor crimes. Any person found guilty of a crime no greater than petit larceny was to be fined and to pay costs of the suit. If he failed to pay these, he was to be put to work upon the public streets or roads.<sup>13</sup>

In May, 1861, the citizens decided to repeal that part of the act of February 20, 1860, which had given power to the sheriff of Arapahoe County. They now created the office of sheriff of Gregory District. They also passed an act regarding change of venue, and made it possible to summon jurors from outside the district if an accused party believed that the citizens were so prejudiced against him that he could not have a fair trial by the people of the district.<sup>14</sup>

The final act in the series provided for the combining of Enterprise and Gregory districts. Five citizens of Gregory District were appointed as commissioners to meet representatives of Enterprise District. The joint commission was to revise and harmonize the laws of the two districts and to report a complete set of laws at a meeting to be held at Gregory Point on June 1 "at early candle light". The report of the commissioners and the harmonized laws have not been found, and we are left in ignorance as to whether or not the districts were united.<sup>15</sup>

The impression has been created by Hollister that when new districts were formed they copied their laws and customs from Gregory District with certain modifications.<sup>16</sup> An examination of the records shows that Hollister gave undue credit to the Gregory District lawmakers. At least seven districts were formed in 1859. While there are certain similarities in the laws, they vary so greatly in important particulars that a generalization as to their source is questionable.

<sup>12</sup> Gilpin County, Gregory Dist., Record C.

<sup>13</sup> *Id.*, Book B 2d.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Id.*, Grantee Index.

<sup>16</sup> Hollister, *Mines of Colorado*, p. 82.

The laws of 1859 were very simple, but during 1860 the codes became more complete and something like uniformity prevailed. Laws or portions of laws formulated in one district were sometimes adopted by one or more districts, but with few exceptions districts did not have duplicate codes. The object of this part of the paper is to show some of the more important variations.

Let us first consider the subject of district offices. The laws of 1859 show marked differences in this respect. The Gregory law of June 8 provided for a president and secretary, but on July 9 a resolution created the offices of president, recorder, and secretary.<sup>17</sup> The Bay State District law of July 19 provided for a president, one or more vice-presidents, a secretary, a sheriff, and a judge.<sup>18</sup> The law of the Gold Hill District, adopted July 30, created the offices of president, justice of the peace, constable, and recorder.<sup>19</sup> The Pleasant Valley Number 10 District law of September 3 created the offices of president, recorder, and stakemaster.<sup>20</sup> It is evident that, in this particular at least, the districts in 1859 were working along independent lines.

In 1860 the Downieville, Coral, Montana, and Trail Creek districts adopted the Gregory organization of July 9, 1859, with the three offices of president, recorder, and sheriff,<sup>21</sup> but other districts showed wide divergencies. Lower Union District had a president, three vice-presidents, and a recorder.<sup>22</sup> Jackson District had a recorder, justice of the peace, and sheriff.<sup>23</sup> Upper Fall River laws provided for the offices of president, recorder, sheriff, judge, and treasurer.<sup>24</sup> In the Hawk Eye District the only elected officer was a recorder.<sup>25</sup> In the Climax District the offices were president, recorder, constable, and stakemaster.<sup>26</sup> In the Wisconsin District the law of February 13, 1860, provided for a president, secretary, and stakemaster. In May the office of constable was added.<sup>27</sup> After the Climax District united with Wisconsin District, the revised law pro-

<sup>17</sup> Gilpin County, Laws and Regulations of the Mines of the Gregory Diggings District.

<sup>18</sup> *Id.*, Bay State Dist., Book A.

<sup>19</sup> Boulder County, Gold Hill Dist., Laws of 1859.

<sup>20</sup> Gilpin County, Pleasant Valley Number 10 Dist., Laws and Minutes.

<sup>21</sup> Clear Creek County, Downieville Dist., Book A; Coral Dist., Laws enacted September 17, 1860; Randall Papers, Montana Dist., Laws; Trail Creek Dist., Law Book.

<sup>22</sup> Clear Creek County, Lower Union Dist., Book A.

<sup>23</sup> *Id.*, Jackson Dist., Laws of June 16, 1860.

<sup>24</sup> *Id.*, Upper Fall River Dist., Book D.

<sup>25</sup> Gilpin County, Hawk Eye Dist., Book A.

<sup>26</sup> *Id.*, Climax Dist., *Laws*, in Wisconsin Dist., Book C.

<sup>27</sup> *Id.*, Wisconsin Dist., Book B.

vided for the offices of president, recorder, sheriff, and stakemaster.<sup>28</sup> The Gold Hill law of 1860 provided for a president, vice-president, recorder, justice of the peace, constable, and road commissioner.<sup>29</sup> In Sugar Loaf District the office of treasurer was created.<sup>30</sup> The Central Mining District had only two officers, a recorder and a surveyor;<sup>31</sup> and in Ward District the only officers were a president and a recorder.<sup>32</sup>

The laws of 1861 show fewer variations than in previous years, but still the tendency to act independently was as powerful as that of uniformity. In the Silver Lake District the only regularly elected officer was a recorder, all other officers being appointed by the miners when in session.<sup>33</sup> In Wisconsin District a special arrangement was made for the miners of Erick Gulch, the privilege of electing a justice of the peace and a sheriff, to serve in that portion of the district, being granted in a miners' meeting on July 24, 1861.<sup>34</sup> The Snowy Range District provided for a president and recorder only,<sup>35</sup> and the Ward District added the offices of sheriff, surveyor, road commissioner, and three road viewers.<sup>36</sup> Spanish Bar District had a president, recorder, constable, justice of the peace, surveyor, and collector of taxes.<sup>37</sup>

Upper Union District took a unique step in lawmaking on October 21, 1861, when a miners' meeting decided to have a legislative body of seven or more men who in future would legislate for the district.<sup>38</sup> This meant that the pure democracy was to give way to a representative system. The organization of territorial government in 1861 checked the development of the institutions that had sprung into being in the mountain gulches, but had they continued to develop along normal lines, it seems probable that the step taken in the Upper Union District would have been a natural one in other districts.

Bancroft tells us that in the Gregory District disputes were to be settled by arbitration, and the impression that he leaves is that this

<sup>28</sup> Gilpin County, Wisconsin Dist., Records.

<sup>29</sup> Boulder County, Gold Hill Dist., Laws.

<sup>30</sup> *Id.*, Sugar Loaf Dist., Sugar Loaf Book.

<sup>31</sup> The Central Mining District records are in Boulder County, Gold Lake Mining Dist., Book of Laws.

<sup>32</sup> *Id.*, Ward Dist., Book A.

<sup>33</sup> Gilpin County, Silver Lake Dist., Lode Book.

<sup>34</sup> *Id.*, Wisconsin Dist., Records. Erick Gulch was also known as Middle Gulch or Twelve Mile Diggings.

<sup>35</sup> Boulder County, Snowy Range Dist., Laws of June 7, 1861.

<sup>36</sup> *Id.*, Ward Dist., Book A.

<sup>37</sup> Clear Creek County, Spanish Bar Dist., *Revised Laws*.

<sup>38</sup> *Id.*, Upper Union Dist., *Laws, 1861*.

was the usual method used by the miners in the settlement of difficulties.<sup>39</sup> An examination of the records discloses the fact that in this, as in other particulars, the laws of the districts show many variations. In Wisconsin District the law of February 13, 1860, provided that in cases of dispute between miners the president was to act as judge. Either party to a suit could have the privilege of a jury of three or six, and appeals could be carried to the miners. The law of July 12, 1860, declared that the miners were the highest tribunal and from their decision there was no appeal. The law of December 13, 1860, provided that if the judge were absent or for any reason disqualified, or if the parties believed that a fair trial could not be had before him, or if there was more business than could be attended to, three arbitrators could hear the case, and their decision would be final.<sup>40</sup> When a dispute occurred in Russell District, a meeting of the miners was called, and the chairman of the meeting appointed a jury of six who decided the dispute.<sup>41</sup> In Pleasant Valley Number 10 District difficulties were taken up before a jury of three or six, and appeals were made "to the miners in general".<sup>42</sup> In Lake District disputes between joint owners were settled by three commissioners who were chosen by the disputants.<sup>43</sup> In South Boulder District it was optional with disputing parties whether the case be tried by the president, the justice of the peace, or a jury. Appeals were made to a jury of twelve whose decision was final.<sup>44</sup> In the Bay State District disputes at first were settled by the miners or by arbitrators chosen by the disputants.<sup>45</sup>

In the Snowy Range District the president was to act as judge in all claim disputes.<sup>46</sup> Appeals from his decision were made to the miners, whose decision was final. In Grand Island District any party to a civil suit was entitled to a jury trial. Appeals were made to the president, vice-president, and recorder, who constituted a court of appeals whose decision was final.<sup>47</sup> In the Ohio and Grass Valley districts all civil cases were tried by a jury of three or twelve and from the decision there was no appeal.<sup>48</sup> In Shirt Tail District all

<sup>39</sup> Bancroft, *Works*, XXV. 378, note 32.

<sup>40</sup> Gilpin County, Wisconsin Dist., Book B. Most of the disputes occurred over the boundaries of claims.

<sup>41</sup> *Id.*, Russell Dist., *Laws*.

<sup>42</sup> *Id.*, Pleasant Valley Number 10 Dist., *Laws* of September 3, 1859.

<sup>43</sup> Sayre Papers, Lake Dist., *Laws*.

<sup>44</sup> Gilpin County, South Boulder Dist., *Revised Laws*.

<sup>45</sup> *Id.*, Bay State Dist., Book A.

<sup>46</sup> Boulder County, Snowy Range Dist., *Laws* of June 7, 1861.

<sup>47</sup> *Id.*, Grand Island Dist., Book B.

<sup>48</sup> Clear Creek County, Ohio Dist., Book B; Grass Valley Dist., Book A.

disputes regarding claims were settled by the miners on the lode where the disputed claim was situated.<sup>49</sup>

The miners did not intend to allow technicalities or tricks of lawyers to defeat justice, and several of the districts passed laws aimed at the legal profession. The Ward District law of April 4, 1861, stated that substantial justice should be the rule of practice in all cases and that no technicalities would be allowed to defeat the ends of justice.<sup>50</sup> The Sugar Loaf District law of March 4, 1861, provided that no practising lawyer or other person who had been admitted to practise law in any state or territory would be allowed to appear in a pending cause as attorney unless he himself were a party to the suit, in which case the opposing party would be allowed to employ counsel.<sup>51</sup> The Hawk Eye and Independent districts had similar provisions.<sup>52</sup> In the Banner District the law stated that no "lawyer or pettifogger" should be allowed to plead in any court in the district,<sup>53</sup> and a Trail Creek District resolution provided that no lawyer, attorney, "counselor, or pettifogger" be allowed to plead in any case before any judge or jury in the district.<sup>54</sup> Lower Union District went a step further and provided that if a lawyer practised in any court in the district he should be punished by not less than twenty nor more than fifty lashes, and be banished from the district.<sup>55</sup>

The criminal laws do not show as great variation as other portions of the codes. The usual method of trying a case was by a jury of twelve, but occasional departures from this method may be found. For the crime of murder the guilty party was usually punished by hanging. Upon being found guilty of grand larceny or perjury the criminal was usually punished by whipping and by banishment from the district, the principal variations being in regard to the number of lashes to be applied. In some districts the punishment of all crimes was left to a jury. Occasionally vigilance committees were appointed by the district presidents to examine into and report on criminal violations of the law. Such committees usually held office for three months, or until displaced by the president.<sup>56</sup>

<sup>49</sup> Clear Creek County, Shirt Tail Dist., Book 1.

<sup>50</sup> Boulder County, Ward Dist., Book A.

<sup>51</sup> *Id.*, Sugar Loaf Dist., Sugar Loaf Book.

<sup>52</sup> Gilpin County, Hawk Eye Dist., Hawk Eye Law; Independent Dist., *Laws . . . revised and adopted February 5, 1861.*

<sup>53</sup> Clear Creek County, Banner Dist., Laws.

<sup>54</sup> *Id.*, Trail Creek Dist., Law Book.

<sup>55</sup> *Id.*, Lower Union Dist., Book A.

<sup>56</sup> Boulder County, Sugar Loaf Dist., Sugar Loaf Book; Gilpin County, Independent Dist., *Laws.*

Those who have founded their impressions of life in the mining camps on the stories of Bret Harte, or the modern Wild West tale, or the motion picture, will be somewhat surprised to find that many of the districts passed laws to keep out saloons, gambling dens, and houses of prostitution. The Sugar Loaf District law of May 4, 1861, provided that any gambling place or house of ill fame should be considered as a public nuisance and prosecuted as such.<sup>57</sup> The Gold Hill District had a law against the sale of liquor, and though several attempts were made to annul it, the law remained on the statute book.<sup>58</sup> The Climax miners passed a law forbidding saloons and gambling houses in the district.<sup>59</sup> The Lincoln District law provided that any person selling spirituous liquors, except for medicinal or manufacturing purposes, was to be fined not over fifty dollars for the first offense, twenty-five for a second, and be banished for a third offense.<sup>60</sup> In Banner District a keeper of a house of prostitution, or of a liquor or gambling establishment, was to be prosecuted for committing a nuisance, and if found guilty was to be fined not to exceed one hundred dollars, the fine to be determined by a jury of six men, and the nuisance was to be removed within twenty-four hours.<sup>61</sup> In Jackson District the law of March 9, 1861, provided that no post house or tent where spirituous liquors were sold should be allowed to stand. A first offense was punishable by a fine of twenty dollars, a second offense by a fine of forty dollars, and a third by a fine of eighty dollars and such other punishment as a jury might decide.<sup>62</sup>

It is obviously impossible in a short paper to give a complete digest of the numerous codes, or to point out their multitudinous variations, or to discuss the influence of the miners' laws upon the mining law of the state; but the writer hopes that he has given some idea of the nature of the laws of the mining districts, and that he has broken down some of the erroneous impressions created by earlier writers. Those who desire to make a more complete analysis of the codes will soon have an opportunity, for preparations are now under way to publish the texts in the *Historical Collections* of the University of Colorado.

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<sup>57</sup> Boulder County, Sugar Loaf Dist., Sugar Loaf Book.

<sup>58</sup> *Id.*, Gold Hill Dist., Laws.

<sup>59</sup> Gilpin County, Climax Dist., Laws, in Wisconsin Dist., Book C.

<sup>60</sup> Clear Creek County, Lincoln Dist., *Laws*.

<sup>61</sup> *Id.*, Banner Dist., Laws.

<sup>62</sup> Randall MSS., York Dist., Laws.